

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
TERRY L ZAROWNY,) CASE NO. 10-24282 JPK
) Chapter 13
Debtor.)

ORDER REGARDING FURTHER PROCEEDINGS
CONCERNING CONFIRMATION OF THE DEBTOR'S
CHAPTER 13 PLAN

On February 7, 2011, a status conference was held concerning confirmation of the debtor's Chapter 13 plan. The debtor appeared in person and by counsel Andrew L. Kraemer; the Chapter 13 Trustee appeared personally.

At the hearing, issues concerning property located at 12055 South Hamlin Court, Alsip, Illinois were discussed. Based upon information provided by the debtor and debtor's counsel at the hearing, the court and the Chapter 13 Trustee concluded that the property was not property of the Chapter 13 bankruptcy estate by operation of 11 U.S.C. § 541(b)(7); that the plan should be confirmed; and that the court would enter an order explaining that it had no jurisdiction over approval of any sale of the property, as proposed by the debtor's plan.

The court has now fully reviewed the record in this case. The debtor's interest in the subject real property is designated as an interest in personal property in Schedule B. The description of the property in that Schedule states that the "Debtor owns real estate in a land trust". At the hearing, it was established that the title owner of the property is American Estate and Trust, f/b/o Terry Zarowny. The record made at the hearing tentatively established that the property is held in a land trust, of which Terry Zarowny is the sole beneficiary. Thus, under applicable law, the real property itself – and not just the beneficial interest – is property of this bankruptcy estate, unless otherwise removed from the estate by applicable law. 11 U.S.C. § 507(b)(7) may not be effective to do this: no review has been made by the court or the

Trustee of the factual circumstances of the land trust in relation to an alleged IRA. Additionally, Schedule C filed by the debtor designates the current value of the real estate at \$500,000.00, but only seeks to exempt \$209,800.00 of value: this leaves nearly \$300,000.00 of value that has not been exempted from administration in the case if the real estate constitutes property of the estate.

The plan provides that the proceeds from sale of the property will first be used to pay what is clearly a secured claim of a taxing authority. However, the plan also states that proceeds from sale will first be used to pay back the IRA. The plan then next states that anything "over the amount of \$300000.00 of profits from the sale will be paid to the Trustee to be distributed to the allowed unsecured claims". The term "profits" is imprecise, because it has no reference point: is it measured based upon the basis for purchase of the property, or is it the gross proceeds received after deduction of payments made to the taxing authority and to pay back the IRA?

It may well be that the court has complete jurisdiction to deal with the real estate held in the land trust. The court is unwilling to confirm the plan at this time, until the nature and extent of the debtor's interest in the Alsip, Illinois real estate is clearly defined in terms of 11 U.S.C. § 541(b)(7), and the fact that Schedule C does not exempt the entire value of the property has been taken into account.

IT IS ORDERED that a further hearing regarding confirmation of the plan will be held on **March 7, 2011, at 1:00 P.M.** to address the foregoing matters.

Dated at Hammond, Indiana on February 14, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee